

a

CHAI SIEW YIN

v.

LEONG WEE SHING

b

COURT OF APPEAL, KUALA LUMPUR

GOPAL SRI RAM JCA

SITI NORMA YAAKOB JCA

MOKHTAR SIDIN JCA

[CIVIL APPEAL NO: W-02-750-1999]

15 JANUARY 2004

c

(21 JUNE 2000)

***FAMILY LAW:** Marriage - Validity - Marriage not registered - Whether non-registration 'invalidated' marriage - Law Reform (Marriage & Divorce) Act 1976 - Effect of s. 34 - Whether there was a customary marriage by Chinese rites - Whether marriage 'validated' by s. 34 - Intention of Parliament*

d

***STATUTORY INTERPRETATION:** Aids to construction - Marginal notes - Whether may be used as an aid to construction - Law Reform (Marriage & Divorce) Act 1976, s. 34 - Legal effect of registration of marriages*

e

This was an appeal by the defendant (mother of deceased-husband) from the decision of the High Court allowing the plaintiff's application for a declaration that her marriage to the deceased was valid. Before the High Court, the plaintiff contended that she had married the deceased according to Chinese customary rites and had thereafter lived together with the deceased. The defendant, on the other hand, contended that no Chinese customary marriage had taken place between the plaintiff and the deceased, and that even if ever there was one, it would have been void for non-registration as no marriage between the plaintiff and the deceased was ever registered at the Registry of Marriages. The High Court found for the plaintiff and declared her marriage to the deceased valid, principally on the ground that a Chinese customary marriage had taken place between the plaintiff and the deceased, and that although it was not registered s. 34 of the Law Reform (Marriage & Divorce) Act 1976 ('the Act') had 'validated' it.

*f**g**h**i*

Held (dismissing the appeal)**Per Gopal Sri Ram JCA delivering the judgment of the court**

[1] The finding of the trial judge that the plaintiff and the deceased had gone through a ceremony of marriage according to Chinese customary rites was consistent with the evidence and the probabilities of the case. The finding was based on the credibility of the evidence and the appellate court must defer to the opinion of the trier of fact here. (pp 755 f & 756 a-b)

[2] The object and purpose of the Act is to prohibit polygamous marriages amongst non-Muslims; hence, its requirement that non-Muslim marriages be registered. There is no provision in the Act that declares or renders void any marriage contracted between non-Muslims in accordance with the customary ceremonial rites of the community to which they belong. On the contrary, s. 34 of the Act declares that a marriage that is otherwise valid is not invalidated merely because it has not been registered under the Act. That that is the intention of Parliament becomes clear when regard is had to the marginal notes to s. 34 of the Act. (pp 756 c-f & 757 c-f)

[3] The modern approach to statutory interpretation is more liberal. The marginal notes to a statutory provision may be used as an aid in interpreting it. "A marginal note to a section is part of the statute. It may be considered in construing the section or any other provision of the statute, provided due account is taken of the fact that its function is merely to serve as a brief guide to the contents of the section". (pp 756 g-h & 757 a-b)

[Decision of High Court upheld.]

[Bahasa Malaysia Translation Of Headnotes

Ini adalah rayuan oleh defendan (ibu simati-suami) terhadap keputusan Mahkamah Tinggi yang membenarkan permohonan plaintiff untuk deklarasi bahawa perkahwinannya dengan simati adalah sah. Di hadapan Mahkamah Tinggi, plaintiff berhujah bahawa beliau telah mengahwini simati mengikut adat istiadat Cina dan selepas itu telah tinggal bersama simati. Defendan sebaliknya berhujah bahawa tiada perkahwinan adat Cina telah berlaku di antara plaintiff dan simati, dan jikapun ia wujud, ianya tak sah atas sebab ketiadaan pendaftaran kerana tiada perkahwinan di antara plaintiff dan simati pernah didaftarkan dengan Pejabat Pendaftar Perkahwinan. Mahkamah Tinggi membuat keputusan yang berpihak kepada plaintiff sekaligus mengisytiharkan perkahwinannya dengan simati sebagai sah atas alasan utama bahawa satu perkahwinan adat Cina telah berlaku di antara plaintiff dan simati dan bahawa, walaupun ianya tidak didaftar, s. 34 Akta Pembaharuan Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta') telah 'mengesahkannya'.

a Diputuskan (menolak rayuan)**Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah**

b [1] Dapatan hakim bicara bahawa plaintif dan simati telah menjalani satu upacara perkahwinan mengikut adat istiadat Cina adalah selaras dengan keterangan dan kemungkinan-kemungkinan kes. Dapatan tersebut diasaskan kepada kredibiliti keterangan dan mahkamah rayuan harus menghormati pandangan pengadil fakta tersebut.

c [2] Objek dan tujuan Akta adalah untuk menghalang perkahwinan poligami di kalangan orang-orang bukan Islam. Itulah sebabnya mengapa perkahwinan orang bukan Islam perlu didaftarkan. Tidak terdapat apa-apa peruntukan pun di dalam Akta yang menyatakan atau menjadikan sesuatu perkahwinan itu tak sah jika dimasuki oleh orang bukan Islam mengikut adat istiadat mereka yang tersendiri. Seksyen 34 Akta sebaliknya menyatakan bahawa sesuatu perkahwinan yang sah tidak menjadi tak sah semata-mata kerana ianya tidak didaftarkan di bawah Akta. Bahawa inilah maksud Parlimen menjadi jelas dengan memerhati kandungan nota sisi pada s. 34 Akta.

d [3] Pendekatan moden dalam mentafsir statut adalah lebih liberal. Nota sisi pada sesuatu peruntukan statut boleh dijadikan alat untuk membantu pentafsiran. "Nota sisi kepada sesuatu seksyen adalah sebahagian dari statut. Ia boleh dipertimbang dalam mentafsir seksyen tersebut ataupun mana-mana peruntukan statut, dengan syarat ingatan diambil terhadap fakta bahawa fungsinya hanyalah untuk menjadi petunjuk ringkas kepada kandungan seksyen".

e *Keputusan Mahkamah Tinggi disahkan.]*

Case(s) referred to:

Claydon v. Green [1868] LR 3 CP 511 (*refd*)

Ganesan v. Setiausaha Suruhanjaya Pasukan Polis [1998] 1 MLJ 240 (*fol*)

Pesurohjaya Ibu Kota Kuala Lumpur v. Public Trustee & Ors [1971] 2 MLJ 30 (*refd*)

g *Syarikat Telekom Malaysia v. Business Chinese Directory Sdn Bhd* [1996] 3 MLJ 692 (*refd*)

Syed Ibrahim Syed Abdul Rahman v. Liew Su Chin (F) [1984] 1 MLJ 160 (*refd*)

Legislation referred to:

h Law Reform (Marriage and Divorce) Act 1976, s. 34

Other source(s) referred to:

Married or not married? That is the question, [2002] 3 MLJ cxxix

For the appellant - Dr S Bala Sekaran (Bhagwan Singh, Anita Vijaya Rajah, Alex Lee Kok Heng); M/s Bala & Co

i *For the respondent - V Rajadevan (Dhanaraj Vasudevan); M/s Hazman & Assoc*

[Appeal from High Court, Originating Summons No: S-2-24-814-1999]

[Editor's note: The Federal Court in Civil Appeal No. 2-10-2003(W) has overruled the decision of the Court of Appeal herein. Please see Tan Siew Sen & Ors v. Nick Abu Dusuki Hj Abu Hassan & Anor [2016] 6 CLJ 18 at paras. 30-33 and Ketua Pengarah Pertubuhan Keselamatan Sosial v. Lam Kun Tai [2019] 10 CLJ 378 at para. 24(v) & (vi).]

Reported by Gan Peng Chiang

JUDGMENT

Gopal Sri Ram JCA:

This case concerns a simple issue of statutory construction. The High Court had dealt with it so admirably that we found it unnecessary to call upon the respondent to answer the appellant's submissions. The factual matrix against which this appeal rests is as follows.

On 19 November 1995, the respondent underwent a ceremony of a Chinese customary marriage with her late husband Lau Yen Yoon ("the deceased"). Later, the deceased died in an accident leaving behind some assets which, by the law of intestate succession, ought to go to the respondent as his widow. But the deceased's mother intervened. She said that there was no customary marriage ceremony. She said that even if there was a customary marriage it was void because it was not registered. This led the respondent to take out an originating summons in which she claimed a declaration and some ancillary relief. So, the judge had to deal with two questions: one of fact and the other of law. He resolved both in the respondent's favour and granted her the declaration she sought.

So far as the ceremony is concerned, the respondent in her affidavit describes the more detailed aspects of the rites observed at the ceremony in her affidavit filed in the court below. The appellant in her written evidence challenged the factum of the ceremonial marriage. But the learned judge preferred the appellant's evidence to that of the respondent. He was certainly entitled to do so.

The fact that an originating process is tried on affidavit evidence does not relieve a court of first instance from conducting an analysis of the evidence to discover where the truth lies. As Lee Hun Hoe CJ (Borneo) said in *Syed Ibrahim bin Syed Abdul Rahman v. Liew Su Chin (F)* [1984] 1 MLJ 160:

Not all disputes of fact necessarily raise serious questions to be tried. It is of course quite right to say that it is undesirable to resolve disputes on affidavit evidence. Yet Judges are expected in applying the test to be critical of the affidavit evidence which must on the face be at least plausible.

- a* I think that this court must on such matters as the credibility of evidence defer to the opinion to the trier of fact. This court does not assume any wider power of intervention merely because the evidence is written and not oral: See, *Syarikat Telekom Malaysia v. Business Chinese Directory Sdn Bhd* [1996] 3 MLJ 692. I would accept in its entirety the finding by the learned judge
- b* that the respondent underwent the ceremony in question with the deceased. It is a finding made after a careful analysis of the evidence. It is also consistent with the probabilities of the case.

- c* That leaves the question of law. The argument is that the respondent's customary marriage in question is void for want of registration under the Law Reform (Marriage and Divorce) Act 1976 ("the Act"). The learned judge rejected – and in our view rightly rejected – that argument. It is plain that the fallacy of the appellant's argument lies in its oversight of the object and purpose of the Act.

- d* The main purpose of the Act is to prohibit polygamous marriages among non-Muslims. This is made clear in s. 5 of the Act. It is to achieve this object that the Act requires the registration of non-Muslim marriages. But nowhere in the Act is provision made declaring as void any marriage contracted between non-Muslims in accordance with the customary ceremonial rites of the community to which they belong. And Parliament has taken pains to make that
- e* abundantly clear in s. 34 of the Act. The judge quoted it. He relied on it. This is what it says:

- f* Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.

The marginal note reads "Legal effect of registration". It indicates what s. 34 is all about. Can we use it to interpret the section? I think we can.

- g* Now, it is true that at one time it was taboo to use a marginal note as an aid when interpreting a statutory provision. If you look at the old cases; and even those decided in the 1960's; you will see a refusal by judges to rely on the marginal note to a section as an aid to interpretation. See, for example, *Claydon v. Green* [1868] LR 3 CP 511. So, in *Parson's v. B.N.M. Laboratories* [1964] 1 QB 95, Harman LJ said:

- h* I must, however, here say that I have always been brought up to believe that to interpret an Act of Parliament by the side-notes to the sections is quite inadmissible although there are judicial pronouncements seeming to show that judges have not always refrained, as in my judgment they should, from giving some weight to them.

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But the modern approach is far more liberal. It is exemplified by what Augustine Paul JC said in *Ganesan v. Setiausaha Suruhanjaya Pasukan Polis* [1998] 1 MLJ 240 which I consider to be the correct statement of the law: a

A marginal note to a section is part of the statute. It may be considered in construing the section or any other provision of the statute, provided due account is taken of the fact that its function is merely to serve as a brief guide to the contents of the section (see *Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35; *Sithambaran v. Attorney General* [1972] 2 MLJ 175; *Re Tan Keng Tin & Re Chop Soon Bee* [1932] MLJ 134). b

Returning to the present instance, the marginal note to s. 34 of the Act confirms beyond doubt what the section says. To paraphrase the section, it says that a marriage that is otherwise valid is not invalid merely because it has not been registered under the Act. That is the result which is produced when the section is read as follows: c

Nothing in this Act or the rules made thereunder shall be construed to render ... invalid any marriage which otherwise is valid merely by reason of its ... not having been registered. d

This is the way in which, I think, that section should be read if it is to make any sense. And that is the way in which, I think, that Parliament intended it to be read. e

At the end of the day, a marriage is a contract; albeit a very special type of contract; and if it is Parliament's intention to strike it down for want of registration I would expect very clear language to that effect in the Act. For, the result would be to illegitimise the issue of non-registered customary marriages. This would produce a harsh and unjust result. And as Raja Azlan Shah J (as he then was) said in *Pesurohjaya Ibu Kota Kuala Lumpur v. Public Trustee & Ors* [1971] 2 MLJ 30: "The presumption is that the legislature does not intend what is unjust." However, as it happens, in the present case, Parliament has expressly said that non-registration is not to have any effect on an otherwise valid marriage. f
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I am aware that the decision of the judge in this case has been criticised in the article "Married or not married? That is the question" [2002] 3 MLJ cxxix. It is a well reasoned article. It is well written. Such articles critical of our judgments should be welcomed. We will learn from them. But I do not agree with the views of Mr. Balwant Singh Sidhu on the construction of s. 34 of the Act. He has misunderstood the purpose of the section. In my view, the construction placed by the judge on that section accords with both principle and commonsense. h

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a It was plain at the conclusion of the appellant's arguments that this appeal had no merit. It was dismissed and the usual orders consequent upon a dismissal were made.

b My learned sister Siti Norma Yaakob JCA and my learned brother Mokhtar Sidin JCA have seen this judgment in draft and have expressed their agreement with it.

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